

*Subtitle 4. Trees and forest Nurseries***Part I. Roadside Trees**

§ 5-401. Definition.

In this subtitle, roadside tree means any tree or shrub growing within the right-of-way of any public road. (An. Code 1957, art. 66C, § 359; 1973, 1st Sp. Sess., ch. 4, § 1.)

§ 5-402. Powers of Department generally; establishment of State forest nurseries.

The Department may plant trees along the roadsides, make rules and regulations governing the planting, care for and protect any roadside tree, and establish one or more State forest nurseries for the propagation of trees for any roadside planting. (An. Code 1957, art. 66C, § 358; 1973, 1st Sp. Sess., ch. 4, § 1.)

Purpose. -- It is the evident purpose of this part to promote the interests of public travel, and to develop and conserve the value of public property, by establishing a system of roadside

tree planting and protection for the highways of the State. *C & P Tel. Co. v. Goldsborough*, 125 Md. 666, 94 A. 322 (1915).

§ 5-403. Plans for planting or care of trees.

(a) *Application.*—If the governing body or the road supervisors of any county of the State, the Department of Transportation, the council of any municipality, or any organization or person applies to the Department to plant, care, or protect any roadside tree, the Department shall evaluate the application and inform the applicant concerning the advisability of the requested planting, care, or protection. If, in the judgment of the Department, the requested planting, care, or protection is advisable, the Department shall prepare and submit to the applicant a plan for the same, including an estimate of the cost.

(b) *Approval and implementation of plan.*—Any plan to plant, care, or protect roadside trees may not become operative until the applicant approves the plan and has guaranteed to the Department the cost of the work. When the applicant approves a plan the Department has prepared, and the applicant has guaranteed payment of the cost in a manner satisfactory to the Department, the Department shall perform, or cause to be performed, the specified planting, care, or protection of roadside trees.

(c) *Payment of unexpended balances.*—The Department, without being requested as provided in subsection (a) or guaranteed as provided in subsection (b), may plant, care for, and protect roadside trees and pay for the work out of any unexpended balance of the amount appropriated for the purposes of this subtitle. However, no tree may be planted under the provisions of this section without the consent and approval of the owner of the land on which planted. (An. Code 197, art. 66C, §§ 360-362; 1973, 1st Sp. Sess., ch. 4, § 1.)

§ 5-404. Authority of forest wardens, etc., to arrest without warrant.

Forest wardens and other persons having police powers in the State, in addition to their regular duties, shall enforce the law for the care and protection of roadside trees. In the enforcement of these laws, they possess the same powers as a peace officer to arrest with a warrant. (An. Code 1957, art. 66C, § 363; 1973, 1st Sp. Sess., ch. 4, § 1.)

§ 5-405. Payment by Department to forest warden for making required examinations, planting and care of trees, etc.; reimbursement of Department by applicant for payments.

For his services in making examinations, as provided in § 5-403 (a), the Department shall pay the forest warden upon presentation and approval of his accounts with vouchers, for services in planting roadside trees, trimming, spraying, or otherwise caring for existing roadside trees, as provided in § 5-403 (b). The applicant who guarantees the cost of work shall reimburse the Department for the services of the forest warden and his helpers upon presentation of the forest warden's accounts with vouchers, and upon the approval of the Department. The applicant shall pay for the forest warden's services in examining conditions serving as a basis for permits applied for under § 5-406, for issuing permits, and for supervising work authorized by the permits. The Department shall determine the rate to be paid under this section. (An. Code 1957, art. 66C, § 364; 1973, 1st Sp. Sess., ch. 4, § 1.)

Delegation of duty of fixing fees not unconstitutional.—There is no constitutional prohibition against delegating to a public board or commission, serving as a governmental agency, the

duty of fixing the fees to be charged for a public service. *C & P Tel. Co. v. Goldsborough*, 125 Md. 666, 94 A. 322 (1915).

§ 5-406. Permit to cut down or trim trees; prohibited conduct without permit.

(a) *Application for permit required; exception.*—Any person who desires to cut down or trim any roadside tree shall apply to the Department for a permit, except that: (1) if a tree is uprooted or its branches broken so as to contact telephone, telegraph, electric power, or other wires carrying electric current, or if the tree or its branches endanger persons or property, the tree or its branches may be removed without first obtaining a permit from the Department; and (2) a tree standing within the right-of-way of a public road which has not been surfaced with either stone, shell, gravel, concrete, brick, asphalt, or other improved surface maybe cut down and removed by the abutting landowner for his own use without first obtaining a permit.

(b) *Prohibited conduct.*—A person may not cut down, trim, mutilate, or in any manner injure any roadside tree, except as authorized by this section, without a permit from the Department. (An. Code 1957, art. 66C, § 365; 1973, 1st Sp. Sess., ch. 4, § 1.)

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Permit requirement is provided as regulation.—The requirement of a permit from the Department for the trimming or removal of roadside trees, so far as it affects proprietary rights, is clearly provided as a regulation merely, and not as a possible prohibition, of their exercise. *C & P Tel. Co. v Goldsborough*, 125 MD. 666, 94 A. (1915)

And does not mean that permit can be denied one having property right in trees. — The provision requiring a permit from the Department for trimming or removal of roadside trees on public highways was designed to prevent interference with trees on the public highways, by persons acting without interest, but vested ownership is to be respected, and the law is not to be construed as meaning that a permit can be denied to one having a valid right of property in such trees. *C & P Tel. Co. v Goldsborough*, 125 MD, 666, 94A. 322 (1915).

NATURAL RESOURCES

§ 5-408. Use of trees for planting on State forest reserve.

Any trees grown in State nurseries, not required for roadside planting, may be used for planting on the State forest reserve or furnished to any landowner of the State at not more than the cost of production. The trees shall be planted for conservation purposes according to plans approved by the Secretary under rules and regulations promulgated by the Department. (An. Code 1957, art. 66C, § 367; 1973, 1st Sp. Sess., ch. 4, § 1.)